



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, LOS ANGELES DISTRICT
3636 N CENTRAL AVENUE, SUITE 900
PHOENIX, ARIZONA 85012-1939

October 17, 2018

SUBJECT: Modification of Standard Individual Permit for Villages at Vigneto (Permit No. SPL-2003-00826)

Mr. Michael T. Reinbold
El Dorado Benson, LLC
8501 N. Scottsdale Rd, Suite 120
Scottsdale, AZ 85253

Dear Mr. Reinbold:

Your suspended Department of the Army permit for the Villages at Vigneto, (Permit No. SPL-2003-00826), which authorized you to discharge fill into waters of the U.S., in association with the project in Township 17 South, Range 20 East, Sections 32-33, E½ Section 31 and Township 18 South, Range 20 East, Sections 3-5, 8-10, 15-17, E ½ Sections 6, 7, and 18 within the city of Benson, Cochise County, Arizona is reinstated with modifications.

Under the provisions of 33 Code of Federal Regulations 325.6(d), the start date is to remain the same and the completion date is extended from June 30, 2026 to June 30, 2038.

Under the provisions of 33 Code of Federal Regulations 325.7(b), your permit is modified to read as follows:

Special Conditions

a) Water Quality Certification. The permittee shall comply with the Arizona Department of Environmental Quality's Clean Water Act Section 401 water quality certification dated October 24, 2017.

b) Mitigation. The permittee shall comply with the ACOE File No. 2003-00826-SDM, Phase I of the Villages at Vigneto (formerly Whetstone Ranch) March 2018 HMMP. A copy of this document is enclosed.

c) Declaration of Restrictive Covenants. The Permittee shall use the form of the restrictive covenant attached, subject to final approval by the Corps, to record the preservation of the Off-site Mitigation Parcel and the On-site Mitigation Lands as those terms are defined in the March 2018 HMMP. The Restrictive Covenant for the Off-site Mitigation Parcel shall be recorded within one year from the effective date of this modified permit.

For the On-site Mitigation Lands, the Restrictive Covenants shall be recorded in accordance with the schedule set forth below and shall protect, as defined in the Draft Restrictive Covenant, a minimum of 1,624 acres of land on the Development Project property, including all avoided jurisdictional waters, as well as primary and secondary buffers within the Development Project property. Further, the outer boundary of the Primary Buffer, as described in the March 2018 HMMP, must be at least 25 feet from the ordinary high water mark of avoided jurisdictional waters. The permittee has recorded a Preservation Area Map depicting the general location of the On-site Mitigation Lands that would be subject to Restrictive Covenants in the future, see attached. The purpose of the Preservation Area Map is to notify future landowners of the obligation to record Restrictive Covenants under this permit (attached).

The Restrictive Covenants for the On-site Mitigation Lands shall be recorded prior to commencement of development of each Unit or Units of Phase I of the project that includes On-site Mitigation Lands. All Restrictive covenants shall be subject to written approval by the Corps prior to recording. If the Corps has not responded to the request for written approval within sixty days of receipt, the Restrictive Covenant shall be considered approved and can proceed with recordation. The permittee shall also include the restricted property in a final plat and designate such lands as natural area open space on the plat so as to enable the County Assessor to assign separate tax parcel numbers to each parcel of restricted property. Evidence of recordation of the Restrictive Covenants at the Cochise County Recorder's Office shall be submitted to the Corps of Engineers within ten (10) days of recordation.

d) Impacts to Jurisdictional Areas. The permittee shall not discharge dredged or fill material into waters of the United States while constructing this project or any other units of this project, other than the permitted activities identified in Phase I Vigneto Master Plan Figure provided in the Corps Public Notice (attached). The location of the impacts on a given watercourse based on site-specific planning may change locations within the same watercourse. For purposes of this special condition a Watercourse is defined as each of the drainages plus their tributaries that discharge at the Development Project properties east boundary. Each year that this permit is valid, beginning one year from the date of this reinstated permit, the permittee shall electronically submit to the Corps a 1 inch-1500 feet scale diagram of current impacts, showing areas of fill by watercourse. Along with the diagram, the permittee shall submit a tabulation of impacts to waters of the United States that have occurred to date.

e) Sale/Transfer of Property and Transfer of Permit Obligations. This paragraph addresses those circumstances where a parcel within Phase I of Villages at Vigneto is sold by the permittee to a third party (sale of the Development Project as a whole is governed the Corps' standard transfer procedures) and the permittee intends to transfer permit obligations to the purchaser. If the permittee sells a parcel of land within Phase I

of Villages at Vigneto, and intends to transfer permit obligations, the existing permittee and the prospective new owner shall submit a joint written notice to the Corps of the sale. Permit responsibilities for the parcel, including mitigation, shall be transferred to the new owner in accordance with the procedures of this paragraph.

- i. The notice shall indicate the precise total acreage of jurisdictional waters of the United States within the parcel that would be impacted and the new owner's mitigation obligations for the future development activities.
- ii. The notice shall contain an acknowledgment signed by the new owner that it accepts and would comply with the terms and conditions of the permit as it pertains to the transferred parcel.
- iii. Permit responsibilities shall be divided as follows:
 - A. The new owner shall be authorized to impact jurisdictional waters of the United States on the transferred parcel up to the acreage on the parcel that is authorized for impact by this permit.
 - B. The new owner shall be responsible for complying with all terms and conditions of this permit as it pertains to the transferred parcel. The original permittee shall remain responsible for implementing all other terms and conditions of this permit, and liability for acts or omissions occurring on the transferred parcel prior to transfer shall survive transfer.
 - C. Each permittee (including a new owner) shall be solely responsible for its own actions under this permit. The original permittee shall not be liable for a violation of a term or condition of the permit by the new owner and vice versa.

f) Arizona Native Plant Law. Within 30 days of the effective date of this reinstated permit, the permittee shall contact the Arizona Department of Agriculture to obtain the necessary information concerning the Arizona Native Plant Law so that all plant salvage or removal operations comply with that law. This information shall be forwarded to all contractors or staff involved with plant salvage or removal operations.

g) Contractor Notification. The permittee shall include a copy of this permit and a certification in all contracts awarded to contractors or subcontractors for work in Scope of Analysis Area (SOAA). All contractors and subcontractors shall sign the certification that certify that they have read and understand all the terms and conditions of this permit and will comply. The intent of this condition is to ensure that the permittee, successor, assignee, or transferee and its agents, including all relevant contractors, are made aware of the terms and conditions, and binding nature of this permit. Additionally, a copy of this permit shall be available at the construction site at all times.

h) Invasive Species. The permittee shall not use any invasive species listed on the USDA or an Arizona or County list that meets the definitions of EO 13112. The permittee shall prohibit those invasive species from all landscape areas within the Corps' SOAA and shall not be used for revegetation or restoration purposes within waters of the

United States, the primary buffer area, the secondary buffer area, or the offsite mitigation lands.

i) Unidentified Cultural Resources. Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property with the Corps SOAA, the Permittee shall notify the Corps' Archeology Staff within 24 hours (Danielle Storey at 213-452-3855 OR Meg McDonald at 213-452-3849). The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division certifies that project construction may resume, per 36 C.F.R. section 800.13.

j) Historic Properties. The permittee shall comply with all the requirements and conditions of the Memorandum of Agreement among the U.S. Army Corps of Engineers, Los Angeles District and the Arizona State Historic Preservation Officer, regarding the historic properties on the Villages at Vigneto Development, Cochise County, Arizona dated March 8, 2018. This requirement is meant to assure compliance with the permittee's responsibilities under Section 106 of the National Historic Preservation Act. A copy of the agreement is enclosed.

k) Notification. The permittee shall provide notification, either written or verbal, to the Corps of Engineers at least one week prior to the start of work, as to the anticipated beginning and ending dates of each unit's (Units 1-9) construction of Phase I. The permittee shall maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. The permittee shall allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished within the terms and conditions of the permit.

The terms and conditions of Permit No. SPL-2003-00826, except as changed herein, remain in full force and effect.

Please note a copy of this letter is being forwarded to U.S. Environmental Protection Agency, US Fish and Wildlife, Arizona Department of Environmental Quality, Arizona Game and Fish Department and the Arizona State Historic Preservation Office.

Thank you for participating in the Regulatory Program. If you have any questions, please contact Kathleen Tucker at (602) 230-6956 or via e-mail at Kathleen.A.Tucker@usace.army.mil. Please help me to evaluate and improve the regulatory experience for others by completing the customer survey form at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

Sincerely,

Sallie Diebolt
Chief, Arizona Branch
Regulatory Division

Enclosures